

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 12, 2007

IN THE MATTER OF J.R.B.

**Appeal from the Juvenile Court for Davidson County
No. PT 19583 Betty Adams Green, Judge**

No. M2007-00442-COA-R3-PT - Filed November 2, 2007

The trial court terminated the parental rights of the father of a six-year old girl on multiple grounds, including abandonment, failure to substantially comply with the permanency plan, and failure to remedy persistent conditions that diminish the child's chances for early integration into a safe, stable and permanent home. The father argues that the agency failed to make reasonable efforts to reunify him with his child and that since he was incarcerated when he first learned for certain that he was the child's father, and has been in prison ever since, none of his parental failures can be held against him. We affirm the trial court's finding that the ground of substantial noncompliance with the permanency plan was proved by clear and convincing evidence. We also affirm the trial court's finding that termination of the father's parental rights is in the child's best interests.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court
Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J., joined. WILLIAM B. CAIN, P.J., M.S. not participating.

C. Michael Cardwell, Nashville, Tennessee, for the appellant, E. S.

M. Allen Ehmling, Gallatin, Tennessee, for the appellee, the Association For Guidance, Aid, Placement and Empathy, Inc.

Linda M. Anderson, Nashville, Tennessee, for the appellee, Guardian Ad Litem.

OPINION

J.R.B., the child at the center of this case, was born on August 5, 2000. Her mother was married at the time of the child's birth, and thus the mother's husband was considered to be the child's father in the eyes of the law, even though he was in jail at the time of J.R.B.'s conception. *See In re T.K.Y.*, 215 S.W.3d 343 (Tenn. 2006). However, the mother subsequently named another

individual, eighteen year old E.S. (“Father”), as the biological father of J.R.B., and his paternity was confirmed through DNA testing in September of 2004.¹

E.S. realized he might be J.R.B.’s father. He took the child to show her to his grandmother when she was still an infant, and he testified that for a period of a few months in 2002 he took care of the child every weekend. But he was arrested in February of 2004, and at the time his paternity was legally established, in September of 2004, Father was in jail awaiting trial for aggravated robbery of an undercover policeman. He was convicted on April 21, 2005, and was sentenced to eight years in prison.

The mother was unable to take care of J.R.B. and her three siblings. In November of 2001, the Department of Children’s Services (DCS) filed a petition for custody with a request for emergency removal of J.R.B. and her siblings, which was granted. The children were returned to the mother some time thereafter, and DCS subsequently furnished home services for the family.² In January of 2002, the mother again placed the children in the custody of DCS. She was homeless by that time and was also using cocaine. Foster care was terminated in November of 2002, and the children were returned to the mother.

On October 15, 2003, the mother placed J.R.B. and her siblings in foster care with an organization called AGAPE.³ A social worker for AGAPE testified that she tried to get in touch with Father, since she knew that he had been alleged to be J.R.B.’s father, but the letters she sent to his known address were returned as unclaimed.

AGAPE filed a petition in the Juvenile Court of Davidson County for legal custody of the children on December 3, 2003. Father testified that he also filed a petition for custody of J.R.B., presumably after his paternity had been legally established. He was still incarcerated at the time of the custody hearing, so he had to be transported from jail in order to attend. The court granted AGAPE’s petition for custody on June 29, 2004.

II. TERMINATION PROCEEDINGS

On April 28, 2006, AGAPE filed a petition for the termination of Father’s parental rights in the Juvenile Court of Davidson County, setting out numerous possible grounds.⁴ The termination hearing was conducted on October 23, 2006. Father was transported to Nashville from the Whiteville Correctional Center in West Tennessee so he could appear and testify.

¹Any rights the mother’s husband may have had to the child were terminated on August 23, 2005.

²None of the documents generated by J.R.B.’s prior placements with DCS have been made part of the record.

³The name is an acronym for The Association for Guidance, Aid, Placement and Empathy, Inc.

⁴The mother’s parental rights had been terminated on August 5, 2005, and are not at issue in this case.

The other witnesses to testify were Michelle Mountjoy, a social worker with AGAPE, who had been working with J.R.B. ever since the child came into the organization's custody, and Sergeant Michael Allen of the Department of Correction. Father was represented by appointed counsel. The interests of J.R.B. were represented by a Guardian ad litem.

Ms. Mountjoy testified that when the true paternity of J.R.B. was established, AGAPE formulated a permanency plan to promote a relationship between the child and her father.⁵ The plan required Father to complete his sentence and to remain free of legal complications, and to demonstrate that he was no longer using drugs by complying with random drug screens and passing them. The plan also included provisions for regular visitation. Ms. Mountjoy testified that she brought J.R.B. to visit with Father four times while he was being held at the Hill Detention Center.⁶

On April 29, 2005, Father was transferred to the Charles Bass Detention Center. Sergeant Allen was the Chairman of the Grievance Committee at that facility, and his testimony and the records he brought to court showed that Father committed four disciplinary infractions while he was incarcerated there, starting with failure of a drug screen. The penalties included a six month suspension of visitation privileges for the drug infraction and a three month suspension for another infraction. Ms. Mountjoy testified that Father would have been entitled to 31 weekly visits while he was at the detention center, but that because of the suspensions he only managed two.

On December 2, 2005, Father was transferred to the Whiteville Correctional Facility. Ms. Mountjoy did not learn of the transfer until February of 2006. A new permanency plan was subsequently formulated, similar to the earlier one, but with the additional requirement of successful completion of a drug and alcohol treatment program. The new plan also gave Father the responsibility of informing the caseworker of his whereabouts and taking action to set up visitation with his child. A hearing on the permanency plan was conducted in March of 2006. Father was transported to Nashville for the hearing.

At the hearing on the permanency plan, Ms. Mountjoy had told Father that she was ready, willing and able to bring J.R.B. to Whiteville on a regular basis for whatever visitation with Father the prison would allow. She testified that Father expressed a desire to resume visitation and that he was informed that it would be his responsibility to put Ms. Mountjoy's name on his list of approved visitors in order to enjoy visitation with J.R.B. She also told him to call her so that she would know that she could resume visitation, and she testified that AGAPE took collect phone calls from inmates, but that she did not hear from Father

Ms. Mountjoy also answered questions as to J.R.B.'s current circumstances. She testified that the child is in the custody of a foster family with three of her siblings. The youngest sibling is

⁵ At the time the first permanency plan was adopted, Father was incarcerated, but he had not yet been convicted or sentenced.

⁶ Ms. Mountjoy testified that during the time he was at the Hill Detention Center, Father could have had seven visits with his daughter, but that three visits were missed through no fault of his own.

in a separate foster home, but Ms. Mountjoy brings him to visit with his brothers and sisters on a regular basis. According to the social worker, the children are always eager to see their brother and always ask when he will be able to visit. She testified that all the children are close, are very protective of each other, and that their relationship with one another has been the most consistent positive factor in their lives. AGAPE was looking for a family that would be willing to adopt all of the children, but had not found one at the time of the termination hearing.

When Father took the stand, he admitted that he did not even attempt to have Ms. Mountjoy's name added to his visitation list. As best as we can understand his testimony, he failed to act because the process could be difficult. He implied that even if he asked, there was no guarantee that Ms. Mountjoy would be put on the list, and even if she was on the list, he wasn't sure that visitation would result. He stated,

Man, it's a whole lot of stuff you got to go through. It ain't just I can go tell them to put her on my list or go through this that and the other. It's a lot of stuff you got to go through to get visitation approved down there. And, you know, you can't just go out where you at and go talk to people and have something done or something. You got to sign up for this. You got to wait on to even be called for here. There's a whole lot of stuff you got to go through.

Father admitted, however, that Ms. Mountjoy was "pretty good at setting up visits." He also confirmed Ms. Mountjoy's testimony that she informed him that he could call AGAPE collect. He said that he had tried, but did not get through. In any case, there was no visitation between J.R.B. and Father in Whiteville. Father also did not send his daughter a birthday card or Christmas card. He explained, "I don't know where to send it to." Asked if he tried to send a birthday card to his daughter by way of Ms. Mountjoy or AGAPE, he stated "No. Because I'm not – it's not guaranteed to get there."

Father testified extensively about the difficulties of life in prison and suggested that the eight to ten disciplinary infractions he admitted to have incurred at Whiteville arose from those difficulties.⁷ He was asked "Why do you keep doing violations?" and he responded, "It's prison, it ain't daycare." He testified that he was removed from a drug treatment program when he was placed in solitary confinement as the result of a disciplinary infraction, but that he had begun another such program. He also denied using illegal drugs at Whiteville, but admitted he had done so a few times before he was disciplined for failing a drug screen at the Charles Bass Detention Center.

Under questioning, Father admitted that he had been a drug dealer and that he had begun selling drugs at age thirteen. He testified that on a good day he might make as much as \$3,500, but that it was hard to say how often those good days occurred, and that on many days "I might not even sell no dope." He recognized that dealing was a dangerous occupation, because in 2003 he got

⁷Father admitted that he received disciplinary write-ups at least once a month while incarcerated at the Whiteville Correctional Facility.

robbed during a drug sale, was shot six times, and spent two and a half months in the hospital. He testified that he intended to change when he got out of prison, because dealing drugs was no longer the life style he wanted to live.

At the conclusion of testimony, AGAPE waived closing argument. Father's attorney argued that AGAPE had not proved any grounds for termination because the testimony of Father indicated that any failure to visit or support his child or to complete the requirements of the permanency plan were due to the exigencies of prison life and, thus, they were beyond his control. The Guardian ad Litem noted that J.R.B. had been in foster care for most of her life and that Father's behavior since he started serving his sentence gave very few indications that he would be likely to remedy the conditions that made foster care necessary.

The trial court filed an order on January 25th, 2007, terminating the parental rights of Father on four separate grounds.⁸ The court found by clear and convincing evidence that Father had willfully failed to visit his child or engage in more than token visitation for four consecutive months immediately proceeding the filing of the termination petition, *see* Tenn. Code Ann. § 36-1-102(1)(A)(I), thereby abandoning the child.

The court also found by the same standard of proof that Father had failed to substantially comply with the parenting plans set forth and ratified by the court, *see* Tenn. Code Ann. § 36-1-113(g)(2); that J.R.B. had been in foster care for more than six months and that there was little likelihood that the conditions which led her to foster care could be remedied in the near future, *see* Tenn. Code Ann. § 36-1-113(g)(3)(A); and that Father showed wanton disregard for the care of J.R.B. due to his activities as a user and dealer of drugs, by using illegal drugs during incarceration and by continuing to have problems with following rules and orders in prison, *see* Tenn. Code Ann. § 36-1-113(g)(1) and 36-1-102(1)(A)(iv).

The court also found by clear and convincing evidence that it would be in J.R.B.'s best interest for Father's parental rights to be terminated, in light of the factors set out in Tenn. Code Ann. § 36-1-113(i). This appeal followed.

III. STANDARDS FOR TERMINATION OF PARENTAL RIGHTS

A parent has a fundamental right to the care, custody and control of his or her child. *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212-13 (1972); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174-75 (Tenn. 1996); *In Re Adoption of a Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995); *Nale v. Robertson*, 871 S.W.2d 674, 678 (Tenn. 1994); *In re C.W.W.*, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000). While this right is fundamental, it is not absolute. The state may interfere with parental rights if there is a compelling state interest. *Santosky v. Kramer*, 455 U.S. 745, 747, 102 S. Ct. 1388, 1391 (1982); *Nash-Putnam*, 921 S.W.2d at 174-75. The grounds upon

⁸The trial court found that AGAPE had not proved abandonment by willful failure to support to the required clear and convincing evidence.

which the state's interest in the welfare of the child justifies termination of a parent's rights are set forth in Tennessee Code Annotated, section 36-1-113(g).

Termination proceedings in Tennessee are governed by statute. Parties with standing to seek the termination of a biological parent's parental rights must prove two things. First, they must prove the existence of at least one of the statutory grounds for termination. Tenn. Code Ann. § 36-1-113(c)(1). Second, they must prove that terminating parental rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2). Because of the fundamental nature of parental rights, parties seeking to terminate such rights must prove all the required elements by clear and convincing evidence. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). "This heightened standard . . . serves to prevent the unwarranted termination or interference with the biological parents' rights to their children." *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

IV. ABANDONMENT

In the present case, the trial court found that the proof as to the conduct of Father satisfied multiple separate statutory grounds for termination, including abandonment by failing to visit with the minor child. The petition alleged and the trial court based its decision on the definition of abandonment found in Tenn. Code Ann. § 36-1-102(1)(A)(i), which is the failure to visit or exercise more than token visitation "for a period of four consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent."

This definition does not apply to Father's situation. Instead, the legislature has created another definition specifically applicable to incarcerated parents:

A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration which exhibits a wanton disregard for the welfare of the child.

Tenn. Code Ann. § 36-1-102(1)(A)(iv).

Thus, to the extent a finding of abandonment is based on willful failure to visit for a four month period, the relevant period of time for an incarcerated parent is not the four months before the petition is filed. Because the petition for termination of parental rights alleged and the trial court found that Father had abandoned R.S.B. by willfully failing to visit his child or engage in more than token visitation for the four consecutive months immediately preceding the filing of the termination petition, the court clearly based its finding on a definition of abandonment that does not apply to Father. Consequently, we must reverse that finding.

However, the court also found that the ground of “wanton disregard” had been proved by clear and convincing evidence. The provision referred to by the court, and alleged by AGAPE, is not a separate ground, but is, instead, an alternative definition of abandonment applicable to incarcerated parents. Tenn. Code Ann. § 36-1-102(1)(A)(iv).

Thus, separate and apart from failure to visit, Tenn. Code Ann. § 36-1-102(1)(A)(iv) also includes an independent test for abandonment based upon a parent’s pre-incarceration conduct. *In re Audrey S.*, 182 S.W.3d 838, 870-71 (Tenn. Ct. App. 2005). With regard to that test, [w]e have repeatedly held that probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can, alone or in combination, constitute conduct that exhibits a wanton disregard for the welfare of a child.” *Id.*, 182 S.W.3d at 867.

The trial court herein found that Father’s wanton disregard for the welfare of the child was evidenced by “his admission to having sold and used illegal drugs since he was a teenager and has continued using illegal drugs during his incarceration. He continues to have legal problems with following rules and orders of the officers at the correctional facilities.” While substance abuse and frequent incarceration may constitute wanton disregard, we are not convinced that the evidence in this case rises to the required level. In any event, Father was not determined to be the biological father of this child until after he was incarcerated.⁹ Therefore, we cannot conclude that his pre-incarceration conduct reflected a wanton disregard for the welfare of the child.

V. NONCOMPLIANCE WITH THE PERMANENCY PLAN

Although we have determined that the willful failure to visit ground of abandonment cannot be sustained, the evidence surrounding visitation is not irrelevant. It is relevant to another ground found by the court.

Tennessee Code Annotated § 36-1-113(g)(2) authorizes termination of parental rights when there has been substantial noncompliance by the parent with the statement of responsibilities in a permanency plan. The trial court herein found that ground had been established by clear and convincing evidence. Determining whether substantial noncompliance has been shown is a question of law that must be reviewed without a presumption of correctness. *In re Valentine*, 79 S.W.3d at 548.

Prior to terminating a parent’s rights on this ground, the trial court must find that the requirements of the permanency plan that the parent allegedly did not satisfy are “reasonable and are related to remedying the conditions which necessitate foster care placement.” *Id.* at 547 (quoting Tenn. Code Ann. § 37-2-403(a)(2)(C)). Noncompliance with requirements in a permanency plan that are neither reasonable nor related to remedying the conditions that led to the removal of the child from the parent’s custody is not relevant for purposes of Tenn. Code Ann. § 36-1-113(g)(2). *Id.* at

⁹While there was some proof that Father believed the child to be his, the trial court made no finding in that regard, and the child had a different legal father until Father was adjudicated the biological father.

548-49. If a trial court fails to make this finding, this court must make that determination *de novo*. *Id.* at 547.

In order for noncompliance to justify the termination of parental rights, it must be “substantial.” *Id.* at 548. In other words, mere technical noncompliance alone is not sufficient to justify the termination of parental rights. *Id.* Thus, the parent’s degree of noncompliance with a reasonable and related requirement must be assessed.

The original permanency plan had the dual goals of return home and adoption. The plan notes that the Foster Care Review Board had recommended adding the goal of adoption “after considering the history of previous involvement with DCS and out-of-home placements, the amount of time the children have been in foster care, and the continuing instability of both parents.” A significant component of the plan was that the child have contact with Father so that a relationship could be developed and maintained. It was noted that the child needed regular visitation with Father and contact by letter so as to develop that relationship.

The plan recognized the limitations imposed by Father’s incarceration. Among the responsibilities assigned to Father were: to complete his sentence and “remain free of legal complications;” establish and maintain a relationship with the child by participating in regular visitation; and to demonstrate that he is no longer using drugs by complying with random drug screens and passing them. The plan was established while Father was in pre-trial detention at the Hill Detention Center. It also noted that Father’s progress needed to be monitored and that a termination petition should be filed if there is not significant progress toward reunification with Father.

The later or revised permanency plan, dated March 3, 2006 and approved by the court on that date, explained that Father had not contacted the agency since September of 2005, that he had “lost visitation privileges due to his behavior while incarcerated,” and that he had been moved twice and had not contacted the caseworker to report his whereabouts. Consequently, AGAPE concluded “[Father] has not complied with the goals on this plan. AGAPE is preparing to file a petition to terminate his parental rights.”

While the revised plan included steps toward transitioning the child into placement for adoption, it retained the responsibilities previously assigned to Father, adding that Father needed to complete a drug and alcohol assessment and to complete drug treatment.

Father’s responsibilities under the plan were limited and, in our opinion, accommodated the restrictions posed by incarceration. Visitation and other contact so as to develop and maintain a parent-child relationship are important and constitute a significant component of the plan. Regular visitation is necessary for the maintenance of the parent-child relationship. Without the existence of a relationship between the child and the parent, hope of the child being reunited with the parent is slight. Father’s incarceration prevents him from performing many tasks that would fall to an unincarcerated parent who sought to have a child returned to him or her. The permanency plans recognize that fact. Consequently, establishing a relationship through regular visitation and other

forms of contact is a significant component of the plan. We find that requirement reasonable and related to conditions that will prevent the child's return to Father's home in the future.

The other requirements, remaining free from legal complications, passing drug screens, and completing drug treatment, are also reasonable. As long as Father remains in prison, the child cannot be reunited with him. Conduct that delays his release from prison and lessens the likelihood he can establish a safe and secure environment after release simply makes the child's stay in the limbo of foster care more lengthy unless the child becomes available for adoption. These requirements, if followed, would help to remove the conditions that require foster care. Consequently, we find they are reasonable and related to the conditions necessitating foster care.

Father admitted that he did not take any steps to arrange visitation with his child and that, as a result, no visitation occurred. He also admitted that he received disciplinary write-ups at least once a month while at the Whiteville Correctional Facility and that one disciplinary infraction resulted in solitary confinement and his consequent removal from a drug treatment program before it could be completed. Father also admitted that he had made absolutely no effort to communicate with J.R.B. by any other means, such as letters or cards.

The trial court found, by clear and convincing evidence, that Father had failed to substantially comply with the permanency plans as approved by the court in that "He has failed to maintain a regular visitation schedule with the minor child." Underlying this finding, the court made specific findings of fact regarding the number of missed visits and Father's failure to notify the caseworker, to request visits, or to make the arrangements necessary for such visits. The court found that Father testified that he "ain't done nothing to get visitation with [J.R.B.]."

Additionally, the court found that Father "has been incarcerated since February 2005 and continues to have disciplinary problems since incarcerated, including positive drug screens, sexual misconduct, and failure to comply with officer's instructions," as set forth more completely in the court's detailed findings of fact. Based on these disciplinary infractions, the court found that Father had failed to comply with the plan because he continues to have legal problems.

The trial court also found that Father had failed to comply with the plans' requirements regarding drug screens, remaining drug free, and drug treatment. The court found that Father had tested positive for illegal drugs during his incarceration, had an opportunity to take drug classes but failed to comply, and that although he started a program, he did not complete it because of discipline imposed for violation of prison rules.

We affirm the trial court's finding that Father failed to substantially comply with the permanency plan.¹⁰

¹⁰ Father argues on appeal that we should reverse the termination because AGAPE failed to prove that it provided reasonable efforts to "prevent the need for removal" or to "make it possible for the child to return home" as is required by Tenn. Code Ann. § 37-1-166(g)(1). However, as AGAPE points out, Father did not raise this issue at trial, and this court does not generally consider issues that are raised for the first time on appeal. *Lawrence v. Stanford*, 655 (continued...)

VI. BEST INTERESTS

As we stated above, once any ground for termination has been established, the court must then determine whether the termination of the parent's rights is in the best interest of the child, by clear and convincing evidence. The legislature has given the courts guidance in our efforts to determine the best interest of the child involved, said guidance being in the form of a list of non-exclusive factors which we are instructed to consider:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i).

Not all of the factors on the list are relevant in the case before us. For example, it is certain that J.R.B. will not be restored to Father's custody while he is in prison, so the factors relating to the parent's home or an imminent change of caretakers have little relevance. Nonetheless, Father's

¹⁰(...continued)

S.W.2d 927, 929 (Tenn. 1983); *State Dept. of Children's Services v. A.L.H.*, 198 S.W.3d 757, 764 (Tenn. Ct. App. 2006). We believe the general rule should apply in this case, especially since AGAPE presented substantial proof as to its efforts to help Father establish or maintain a relationship with his child, despite his incarceration.

efforts to provide a safe, secure, and stable environment for the child as soon as possible have more relevance.

Examining the record in this case, we find no evidence that Father has made any adjustments in his circumstance, conduct, or conditions that would make it safe or in the child's best interests to reside with him in the foreseeable future. While the prison environment presents limited opportunities for adjustments of circumstance and conditions, a clean institutional record could indicate that an incarcerated parent is trying to adjust his conduct in a positive direction. However, the father's prison record shows that he continues to get into trouble on a regular basis, and there is no proof that after he is released the conditions that necessitate foster care would be any different. Although Father has testified that he does not intend to begin selling drugs again, and that he is currently enrolled in a drug and alcohol abuse program, he tested positive for drugs and did not complete a drug treatment program earlier.

Most importantly, Father has not maintained regular visitation or any other type of regular contact with J.R.B. despite the willingness of AGAPE to promote such visits. As a result he has not managed to establish a meaningful relationship with her. Despite his lack of effort to build a relationship with his child, Father contends that she should be denied the opportunity for adoption into a secure and stable home.

J.R.B.'s current living situation is relatively stable. She and her siblings are in foster care together. Ms. Mountjoy testified that J.R.B. is very close to her siblings and that their relationship with one another is the most consistent thing they have had in their lives. AGAPE is therefore trying to arrange an adoption that will keep all of the children together. The parental rights of the fathers of the other children have all been terminated. Should the other siblings be adopted, any resultant separation from her siblings because of the continuation of her parental relationship with Father would be detrimental to her. The continuation of J.R.B.'s relationship with her father threatens to prevent or delay her participation in such improvement in her family situation as adoption with her siblings. Such an adoption, if it can be accomplished, would clearly be in the best interest of J.R.B. Continuation of Father's legal relationship with J.R.B. greatly diminishes the child's chance of early integration into a safe, stable and permanent home.

After a thorough consideration of the entire record in this case, we find that it contains clear and convincing evidence that termination of Father's parental rights is in the best interests of J.R.B.

VII.

The judgment of the trial court is affirmed. We remand this case to the Juvenile Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant.

PATRICIA J. COTTRELL, JUDGE